

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

Motion GRANTED  
Telephone conference  
set 4/2/2008 at 4:45 pm  
is CANCELLED.

ROBERT E. MOECKEL, individually and )  
on behalf of the John Morrell Employee )  
Benefits Plan, similarly situated Plans, and )  
other participants and beneficiaries similarly )  
situated, )

Plaintiff,

vs.

CAREMARK INC.,

Defendant.

) Case No.: CV-3-04-0633  
) Judge Trauger  
) Magistrate Judge Knowles  
)  
)  
)  
)



**UNOPPOSED MOTION FOR ENTRY  
OF FINAL JUDGMENT AND ORDER OF DISMISSAL**

Defendant Caremark Inc. (“Caremark” or “Defendant”), by its attorneys, pursuant to Rule 58 of the Federal Rules of Civil Procedure respectfully requests that this Court direct the Clerk of Court to enter final judgment in favor of Defendant and against Plaintiff Robert E. Moeckel (“Moeckel” or “Plaintiff”), and, in support thereof, states as follows:

1. Moeckel filed suit against Caremark on July 19, 2004, and filed an Amended Complaint on November 9, 2004, the claims in which alleged that, “Caremark is a fiduciary under ERISA and that Caremark breaches its fiduciary duties in several ways.” (Amended Complaint, Docket No. 44 at ¶ 2).

2. On May 7, 2007, the parties cross-moved for summary judgment as to Caremark Inc.’s ERISA fiduciary status. *See* Docket No.’s 120, 123, 128 and 130.<sup>1</sup>

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<sup>1</sup> Moeckel sought a ruling that Caremark acted as an ERISA fiduciary in its relationship with the John Morrell Plan, such that his case could then be permitted to proceed to determine whether there had been any fiduciary breach. *See* Docket No. 123, p. 2 (“whether Caremark breached its fiduciary duties is a separate question that remains to be addressed down the road”). Whereas, Caremark sought judgment that it was not an ERISA fiduciary as to the John

3. On November 13, 2007, this Court granted Caremark's motion, and denied plaintiff's cross-motion, holding that, "the court does not find that Caremark is an ERISA fiduciary. . . . *Moeckel may not sustain claims against Caremark for breach of fiduciary duty.*" See Nov. 13, 2007 Memorandum Opinion, Docket No. 166 at p. 51 (emphasis added). As all of Moeckel's claims were premised on there existing an ERISA fiduciary duty, and a breach thereof, the Court's November 13, 2007, ruling disposed of this matter in its entirety.

4. Accordingly, as this matter remains open on the Court's docket, Caremark requests that, pursuant to Rule 58 of the Federal Rules of Civil Procedure, this Court direct the Clerk of Court to enter final judgment in favor of Defendant and against Plaintiff Robert E. Moeckel, confirming the dismissal of this matter with prejudice.

5. Undersigned counsel has conferred with counsel for Plaintiff regarding this Motion, and they have no opposition to the relief requested herein.

WHEREFORE, Caremark respectfully requests that this Court direct the Clerk of Court to enter final judgment in favor of Defendant and against Plaintiff Robert E. Moeckel, dismissing this matter with prejudice, and for such further relief as it deems just and proper.

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Morrell Plan, and that it was therefore entitled to judgment as a matter of law as to plaintiff's claims. See Docket No. 130, p. 2 ("Caremark is not an ERISA fiduciary as a matter of law and it should be granted summary judgment.")

**Dated:** April 2, 2008

Respectfully submitted,

By: /s/Robert H. Griffith  
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**CERTIFICATE OF SERVICE**

I hereby attest that the foregoing document was served on the following individuals on  
the 2d day of April, 2008 as follows:

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